Case No. G054358
Consolidated with Case No. G054422

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

YELP, INC.,

Petitioner,

v.
THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA,
ORANGE COUNTY,

Respondent,

GREGORY M. MONTAGNA et al,

Real Parties in Interest.

On Appeal From the Superior Court for the Superior Court for the State of California,
Orange County, Case No. 30-2016-00848551
Hon. Andrew Banks

AMICUS CURIAE BRIEF OF ELECTRONIC FRONTIER FOUNDATION IN SUPPORT OF YELP, INC.

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Online platforms must be permitted to assert their users' First Amendment rights. Anonymous speech and association have helped to make the Internet one of the most robust forums for wide-ranging and freewheeling social and political debate in the world. A key to the Internet becoming a mecca for free speech has been the creation of diverse online platforms that permit anyone to engage with others, often with the ability to do so anonymously.

Both anonymous speakers and the platforms they rely upon are often the targets of frivolous legal demands that seek to unmask speakers. These demands can be motivated by a desire to harass, intimidate, or silence speakers rather than to pursue legitimate grievances. Such unwarranted demands to unmask speakers harm anonymous speech, a core First Amendment value, and chill others from speaking anonymously.

Besides anonymous speakers asserting their own rights to directly challenge the legal demands to unmask them, online platforms are increasingly asserting their users' rights in court. Platforms assert their users' rights for a variety of reasons, including deterring frivolous efforts to unmask speakers and upholding their own platforms' views on the importance of free speech. They also seek to make their platforms hospitable to important speech that may only be offered under the veil of anonymity. Simply put, many online platforms recognize that a key to maintaining the robust forum their users rely upon requires having their users' backs.

By denying Yelp standing to assert its user's rights in this case, the trial court's holding threatens to undermine online platforms' standing to assert their users' First Amendment rights and thereby erode the ability for the Internet to serve as a forum for anonymous speakers. Furthermore, the legal uncertainty created by the trial court's ruling is likely to increase the number of vexatious demands to unmask anonymous speakers. If online

platforms lack standing to assert their users' rights, defense of these vexatious requests will fall solely to users themselves, many of whom may not know their rights or may otherwise not be in a position to fight for them. The likely result is that more anonymous speakers will be illegitimately unmasked, depriving those speakers of First Amendment-protected anonymity while also deterring others from speaking anonymously.

This Court should reverse to prevent such an outcome.

ARGUMENT

I. The First Amendment's Broad Protections for Invidividuals' Expressive Activities Permits Online Platforms to Assert their Users' Free Speech Rights.

A. Individuals Increasingly Use Online Platforms to Exercise Their First Amendment Rights to Speak and Associate Anonymously.

Internet platforms have become one of the primary mediums that individuals use to speak, associate, and organize. Twenty years ago, the Supreme Court recognized the Internet's ability to serve as a democratic forum in which anyone can become "a pamphleteer" or "a town crier with a voice that resonates farther than it could from any soapbox." *Reno v. ACLU* (1997) 521 U.S. 844, 867.

Internet platforms expand opportunities for users to engage in all manner of expressive activity protected by the First Amendment, but it is perhaps most particularly suited for users who desire to speak and associate anonymously.

Anonymity has become an essential feature of online discourse:

> Internet anonymity facilitates the rich, diverse, and far ranging exchange of ideas. The "ability to speak one's mind" on the Internet "without the burden of the other party knowing all the facts about one's identity can foster open communication and robust debate."

Doe v. 2TheMart.com Inc. (W.D.Wash. 2001) 140 F.Supp.2d 1088, 1092

(quoting *Columbia Ins. Co. v. Seescandy.Com* (N.D.Cal. 1999) 185 F.R.D. 573, 578); *see also Doe v. Harris* (9th Cir. 2014) 772 F.3d 563, 579-80 (discussing the value of anonymous online speech).

"Indeed, courts have recognized that the Internet, which is a particularly effective forum for the dissemination of anonymous speech, is a valuable forum for robust exchange and debate." *Art of Living Foundation v. Does* (N.D.Cal., Aug. 10, 2011) 2011 WL 3501830 at *2; *see also Quixtar Inc. v. Signature Mgmt. Team, LLC* (D.Nev. 2008) 566 F.Supp.2d 1205, 1214 (noting that with anonymous online speech, "ideas are communicated that would not otherwise come forward").

The nation's founders cherished the right to speak anonymously. Indeed, several key figures relied on anonymity when advocating for independence before the Revolutionary War and later when publishing the Federalist Papers. *See Talley v. California* (1960) 362 U.S. 60, 64-65.

Accordingly, the Supreme Court has held that anonymous speech is not some "pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent." *McIntyre v. Ohio Elections Comm'n* (1995) 514 U.S. 334, 357. Anonymity is often a "shield from the tyranny of the majority." *Id*. "The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible." *Id*. at 341-42.

Anonymity "provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent." *Harris*, 772 F.3d at 581 (internal quotations omitted).

Anonymous speech's benefits go far beyond allowing speakers to protect their identities. According to the Supreme Court:

[a]nonymous pamphlets, leaflets, brochures and even books

> have played an important role in the progress of mankind. Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all.

Talley, 362 U.S. at 64.

Similarly, the Supreme Court has sought to protect the right to organize and associate anonymously, holding that the "[i]nviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *NAACP v. Alabama ex rel. Patterson* (1958) 357 U.S. 449, 465. Thus there is a "vital relationship between freedom to associate and privacy in one's associations." *Id*. at 462.

A significant number of people often support social, religious, and political causes anonymously. *See Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton* (2002) 536 U.S. 150, 166-67. When an individual's anonymous political associations are disclosed, they are often "vulnerable to threats, harassment, and reprisals." *Brown v. Socialist Workers '74 Campaign Committee (Ohio)* (1982) 459 U.S. 87, 97. The Internet simply expands individual opportunities to participate anonymously in social or political movements without fear of being linked to them.

B. Online Service Providers Are Often in the Best Position to Assert and Defend Their Users' First Amendment Rights.

With the high volume of expressive activity occurring on the Internet, online platforms are increasingly the target of legal demands seeking to identify the very users who rely on anonymity to speak or associate with others. Platforms have thus become the guardians of their users' anonymity and the first line of defense against frivolous litigation that seeks to intimidate or harass anonymous speakers.

A recent high-profile example underscores the pivotal role platforms

play in defending their users' First Amendment rights from frivolous legal demands. In April, Twitter brought a lawsuit against the Department of Homeland Security (DHS) after Customs and Border Protection (CBP) officials demanded that the social media platform hand over identifying information about an anonymous account that had engaged in criticism of DHS since the inauguration of President Trump. The account also purports to be run by DHS employees. *Twitter, Inc. v. DHS* (N.D.Cal., April 6, 2017, No. 3:17-cv-01916) 2017 WL 1288263.

The gravamen of Twitter's complaint was that government officials had improperly sought to use a summons to unmask an anonymous speaker who had been critical of recent DHS policies and actions. As Twitter wrote, "The rights of free speech afforded Twitter's users and Twitter itself under the First Amendment of the U.S. Constitution include a right to disseminate such anonymous or pseudonymous political speech." *Id*.

The revelation that DHS officials sought to unmask one of the agency's critics drew immediate scrutiny in the United States and abroad, as it was widely viewed as an effort by the government to crack down on dissent. *See* Julia Carrie Wong, *Government Seeks to Unmask Trump Dissident on Twitter, Lawsuit Reveals*, The Guardian (April 6, 2017);[1] Tony Romm, *Twitter is Suing the Government for Trying to Unmask an Anti-Trump Account*, Recode (April 6, 2017).[2]

A day after filing suit, government attorneys told Twitter that they were dropping the demand for information about the user and Twitter dismissed the case. David Ingram, *Twitter Pulls Lawsuit over Anti-Trump*

[1] Available at https://www.theguardian.com/technology/2017/apr/06/twitter-lawsuit-anonymous-account-trump-alt-uscis.

[2] Available at https://www.recode.net/2017/4/6/15211214/twitter-suing-government-free-speech-anti-trump-account-first-amendment.

Account, Says Summons Withdrawn, Reuters (April 7, 2017).[3] The government's quick turnaround was largely viewed as a response to the public criticism of its efforts to unmask an anonymous critic. *See* Mike Isaac, *U.S. Blinks in Clash With Twitter; Drops Order to Unmask Anti-Trump Account*, The New York Times (April 7, 2017).[4]

The outrage prompted U.S. Senator Ron Wyden (D-Or.) to demand that CBP investigate whether the effort to unmask the Twitter user was improper. *See* Mike Masnick, *Homeland Security's Inspector General Investigating Attempt To Unmask 'Rogue' Tweeter*, Techdirt (April 24, 2017).[5] Remarkably, the DHS Inspector General confirmed that its office is investigating whether the effort to unmask the anonymous account "was improper in any way," including "whether CBP abused its authority in issuing the March 14, 2017 summons to Twitter." Letter from John Roth, DHS Inspector General, to U.S. Sen. Ron Wyden (April 21, 2017).[6]

The summons sent to Twitter is just one example of how both the government and private litigants seek to use online providers to unmask anonymous sources to intimidate, silence, or harass them, rather than pursuing legitimate legal grievances. Courts have acknowledged that litigants can misuse "discovery procedures to ascertain the identities of unknown defendants in order to harass, intimidate or silence critics in the public forum opportunities presented by the Internet." *Dendrite Int'l v. Doe*

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[3] Available at http://www.reuters.com/article/us-twitter-lawsuit-idUSKBN1792N9.

[4] Available at https://www.nytimes.com/2017/04/07/technology/us-blinks-in-clash-with-twitter-drops-order-to-unmask-anti-trump-account.html?_r=0.

[5] Available at https://www.techdirt.com/articles/20170421/12434437208/homeland-securitys-inspector-general-investigating-attempt-to-unmask-rogue-tweeter.shtml.

[6] Available at https://www.wyden.senate.gov/download/?id=1CCC6A24-C0F2-4FC2-9C1D-3A40785155A9&download=1.

No. 3 (N.J. App. Div. 2001) 775 A.2d 756, 771. Further, "there is reason to believe that many defamation plaintiffs bring suit merely to unmask the identities of anonymous critics." *Doe v. Cahill* (Del.Sup.Ct. 2005) 884 A.2d 451, 457.

As legal demands to unmask anonymous speakers increase, platforms have developed a familiarity with them along with an understanding of the sometimes conflicting legal standards courts use when analyzing the protections afforded to anonymous speakers. *See* Nathaniel Gleicher, *John Doe Subpoenas: Toward a Consistent Legal Standard* (2008) 118 Yale L.J. 320, 337-362 (describing the many different legal standards courts employ when parties challenge demands to unmask anonymous online speakers). Online platforms thus have a familiarity with both the process for receiving demands to unmask speakers and the relevant law.

C. Online Platforms Have Strong Incentives to Assert Users' Rights as People Demand Greater Protections for their Digital Civil Liberties.

Given the essential role anonymous speech plays in our political and social discourse, many platforms seeking to be the center of such debate make robust user protections a feature of their sites. As a result, many online platforms are increasingly endeavoring to protect their users' identities and other identifying information to the greatest extent permitted by law.

An online platform has "a vested interest in vigorously protecting its subscribers' First Amendment rights, because a failure to do so could affect [its] ability to maintain and broaden its client base." *In re Verizon Internet Services, Inc.* (D.D.C. 2003) 257, F.Supp.2d 244, 258, *rev'd on other grounds by RIAA v. Verizon Internet Services, Inc.* (D.C. Cir. 2003) 351 F.3d 1229. Thus if users of a platform learn that the provider is either

unwilling or unable to fight for their First Amendment rights, they will simply move to another platform.

Moreover, users have become increasingly aware about when and how online service providers may release their customer's data in response to private litigants' subpoenas and government demands. Amicus EFF, for example, conducts an annual survey called *Who Has Your Back*, in which many providers are rated on, among other things, how well they protect their customers' private information from government information demands. EFF, *Who Has Your Back? Protecting Your Data from Government Requests*.[7] In highlighting the differences in various providers' practices, *Who Has Your Back* has also pushed those providers into adopting more protective policies for their users' information. As the 2015 report states:

> The criteria we used to judge companies in 2011 were ambitious for the time, but they've been almost universally adopted in the years since then. Now, users should expect companies to far exceed the standards articulated in the original *Who Has Your Back* report.

Id.

Consumer demand on companies to provide more information about how they respond to requests for information about their users has led many companies to publish annual transparency reports. Twitter's transparency report, for example, provides a detailed breakdown on the geographic location of such requests from United States law enforcement, including whether they came from federal, state, or local police. Transparency Report: United States, Twitter (July – December 2016).[8]

Online providers are also increasingly filing legal challenges to laws

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[7] *Available at* https://www.eff.org/who-has-your-back-government-data-requests-2015.

[8] *Available at* https://transparency.twitter.com/en/countries/us.html.

or policies that enable government officials to demand information about their users while at the same time preventing the services from notifying their users or anyone else about the demands. In addition to the Twitter lawsuit above, Microsoft is currently bringing a First Amendment challenge to the electronic surveillance laws that allow federal authorities to demand its customers' information while preventing the company from notifying its customers or disclosing those requests publicly. *See Microsoft Corporation v. DOJ* (W.D.Wash., Feb. 8, 2017, No. C16-0538JLR) 2017 WL 530353. Denying the government's motion to dismiss, the court held that nondisclosure "orders that indefinitely prevent Microsoft from speaking about government investigations implicate Microsoft's First Amendment rights." *Id*. at *6.

Other providers are challenging similar nondisclosure orders that accompany National Security Letters (NSLs) demanding customer information. *See Under Seal v. Jefferson Sessions* (9th Cir. 2017) Case Nos. 16-16067, 16-16081, 16-16082. The government only recently withdrew the nondisclosure orders in the cases, allowing the companies, CREDO Mobile and CloudFlare, Inc., to publicly identify that they had received NSLs for their customers' information. *See* Andrew Crocker, *Finally Revealed: CloudFlare Has Been Fighting NSL for Years*, EFF Deeplinks (Jan. 10, 2017).[9] The government had gagged both companies for years, preventing either one from even disclosing the bare fact that they had received an NSL. *Id.*

The foregoing shows that online providers increasingly want to publicly disclose demands for their customers' data and that users are keenly interested in knowing whether the providers fight on behalf of their

[9] *Available at* https://www.eff.org/deeplinks/2017/01/finally-revealed-cloudflare-has-been-fighting-nsls-years.

users. It follows that platforms have great incentives to protect their users' private data, particularly when it may be used to identify their anonymous speech.

D. Courts Routinely Hold that Online Platforms Have Standing to Assert Their Users' First Amendment Rights.

As courts encounter more cases in which providers challenge demands to unmask their anonymous users, they routinely hold that online platforms have standing to assert their users' First Amendment rights. The trial court's decision to deny standing to Yelp in this case is thus the exception to what is increasingly well-settled law.

Courts throughout the country have repeatedly held that online platforms have standing to assert their users' rights. *See, e.g.*, *Publius v. Boyer-Vine* (E.D.Cal., Feb. 27, 2017) ___ F.Supp.3d ___, 2017 WL 772146 at *5 (holding that website operator had third-party standing to assert First Amendment rights of its site's anonymous users); *Enterline v. Pocono Medical Center* (M.D.Pa. 2008) 751 F.Supp.2d 782, 785 (same); *McVicker v. King* (W.D.Pa. 2010) 266 F.R.D. 92, 95–96 (same); *In re Drasin* (D. Md., July 24, 2013) 2013 WL 3866777 at *2 (same); *In re Verizon*, 257 F.Supp.2d at 257–58 (same); *see also Trawinski v. Doe* (N.J.Super.Ct.App.Div., June 3, 2015) 2015 WL 3476553 at *4–5 (applying First Amendment standing principles); *Indiana Newspapers, Inc. v. Miller* (Ind.Ct.App. 2012) 980 N.E.2d 852, 858–59 (same).

These cases are not some anomalous result unique to online platforms. Rather, the decisions are a straightforward application of U.S. Supreme Court case law upholding third party standing in First Amendment cases, regardless of other prudential standing limits.

Indeed, this application of the First Amendment is so commonplace that many of the courts cited above took as given that platforms could assert third-party standing in this context. The *McVicker* court, for example,

found that a plaintiff's argument that a website hosting anonymous speech lacked standing to assert its users rights "can be rejected rather summarily." 266 F.R.D. at 95. It went on: "The trend among courts which have been presented with this question is to hold that entities such as newspapers, internet service providers, and website hosts may, under the principle of *jus tertii* standing, assert the rights of their readers and subscribers." *Id*.

The Supreme Court has employed a more relaxed third-party standing analysis in cases implicating First Amendment rights "precisely because application of those rules would have an intolerable, inhibitory effect of freedom of speech." *Eisenstadt v. Baird* (1972) 405 U.S. 438, 445 n.5. Thus the Court has held that booksellers and libraries can assert their patrons' First Amendment rights. *Virginia v. American Booksellers Association, Inc.* (1988) 484 U.S. 383, 387, 392-3. Other courts have held similarly. *See Tattered Cover, Inc. v. City of Thornton* (Sup.Ct.Colo. 2002) 44 P.3d 1044, 1051 n.9 (relying on *American Booksellers* for store owner's ability to raise customers' First Amendment rights); *Lubin v. Agora, Inc.* (Md. 2005) 882 A.2d 833, 846 n.11 (publisher can raise readers' First Amendment rights).

The close relationship between bookstore customers is in many ways akin to the modern relationship many online platforms have with their users. Both booksellers and platforms serve as conduits for individuals to access information and become more informed and engaged members of society, which is a core First Amendment value. *See Lamont v. Postmaster Gen. of U.S.* (1965) 381 U.S. 301, 308 (Brennan, J., concurring) ("It would be a barren marketplace of ideas that had only sellers and no buyers.").

As a result, both booksellers and online platforms obtain information that may reveal their customers' expressive activities—and their identities—information that is similarly subject to significant First Amendment protection. *See Stanley v. Georgia* (1969) 394 U.S. 557, 565

("If the First Amendment means anything, it means that a State has no business telling a man . . . what books he may read or what films he may watch.").

Hence, those customers and users must trust the bookseller or platform to serve as an intermediary that shields their expressive activities from the broader public, the revelation of which might be embarrassing or otherwise damaging.

The Supreme Court has recognized that in the face of overly stringent standing requirements, individuals engaged in protected speech may choose to refrain from speaking. *Secretary of State of Md. v. Joseph H. Munson Co., Inc*. (1984) 467 U.S. 947, 956. This is why "First Amendment cases raise unique standing considerations that tilt dramatically toward a finding of standing." *Lopez v. Candaele* (9th Cir. 2010) 630 F.3d 775, 781 (internal citations and quotation marks omitted).

II. Denying Third-Party Standing to Yelp Will Harm Anonymous Speakers and Chill Free Speech.

If affirmed, the trial court's ruling denying Yelp standing to assert its user's First Amendment rights will directly harm anonymous speakers and discourage others from speaking anonymously. As described above, online platforms often help deter frivolous demands to unmask anonymous speakers by asserting their users' First Amendment rights, as platforms have become well versed in responding to requests to unmask anonymous speakers.

The same cannot necessarily be said for anonymous speakers, as they are often unaware of their legal rights and can be intimidated by the mere fact that their identity is being sought via subpoena. *See USA Technologies, Inc. v. Doe* (N.D.Cal. 2010) 713 F.Supp.2d 901, 906 (acknowledging the "chilling effect that subpoenas would have on lawful

commentary and protest").

Anonymous speakers also face practical obstacles in challenging subpoenas, including that the very act of asserting their rights may lead to disclosure of their identities. *See Enterline*, 751 F.Supp.2d at 785-86.

Further, speakers may not have the financial ability to assert their First Amendment rights, meaning even vexatious litigants with frivolous claims may successfully unmask them as punishment for their speech. Both anonymous speakers and those desiring to speak anonymously are unlikely to be prepared to bear such high costs for their speech. *See Highfields Capital Mgmt., L.P. v. Doe* (N.D.Cal. 2005) 385 F.Supp.2d 969, 981.

If the law does not permit online platforms to assert their users' rights and challenge information demands from private litigants and government authorities, parties will feel emboldened to seek such information even when they have no legitimate legal basis for doing so. This raises the distinct possibility that anonymous speakers acting fully within their First Amendment rights may be unmasked. This is particularly concerning because of the myriad of harms that result when speakers' identities are revealed.

First, the disclosure of anonymous speakers' identities can irreparably and directly harm them. *Art of Living v. Does 1-10* (N.D.Cal., Nov. 9, 2011) 2011 WL 5444622 at *9, Dock. (*Art of Living II*) (citing *McIntyre*, 514 U.S. at 342). At minimum, unmasking can hinder speakers' effectiveness because it directs attention to their identities rather than the content of their speech. In *Highfields*, the court recognized that "defendant has a real First Amendment interest in having his sardonic messages reach as many people as possible – and being free to use a screen name . . . carries the promise that more people will attend to the substance of his views." 385 F.Supp.2d at 980; s*ee also Enterline*, 751 F.Supp.2d at 785-86 (discussing potential harm in unmasking speakers as including upsetting

employment relationships and friendships when the speaker's identity is disclosed).

Further, unmasking is harmful to speakers when their true identities are unpopular, as others may be more dismissive of the speakers' statements, and speakers may be chilled from continuing to speak publicly on that same topic. *See Harris*, 772 F.3d at 581. Also, when a pseudonymous speaker is unmasked, they will often lose their built-up audience, and it will often be difficult for them to rebuild a comparable audience with either their true identity or a new pseudonymous identity. Unveiling speakers' true identities thus "diminishes the free exchange of ideas guaranteed by the Constitution." *Art of Living II*, 2011 WL 5444622 at *9.

Second, unmasking the speaker can lead to serious personal consequences—for the speaker or even the speaker's family—including public shaming, retaliation, harassment, physical violence, and loss of a job. *See Dendrite*, 775 A.2d at 771 (recognizing that unmasking speakers can let other people "harass, intimidate or silence critics").

Third, the harm of unmasking a specific speaker also has the potential to chill others' speech. Would-be speakers on an online message board are unlikely to be prepared to bear such high costs for their speech. *Highfields*, 385 F.Supp.2d at 981. Thus, "when word gets out that the price tag of effective sardonic speech is this high, that speech will likely disappear." *Id*.

These harms would be exacerbated by a legal rule that significantly limits online platforms' ability to challenge legal demands for users' identities. The result would not only deter anonymous speakers from using online platforms in the future, but may reduce the quality of online discourse given the prominent role of anonymity on the Internet.

CONCLUSION

For the foregoing reasons, amicus respectfully requests this Court to reverse the trial court's refusal to grant Yelp standing to assert its user's First Amendment rights.

Dated: May 1, 2017

Respectfully submitted,

/s/ Aaron Mackey

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CERTIFICATE OF COMPLIANCE

I certify pursuant to California Rules of Court 8.204(c) that this Amicus Curiae Brief of Electronic Frontier Foundation is proportionally spaced, has a typeface of 13 points or more, contains 3,918 words, excluding the cover, the tables, the signature block, verification, and this certificate, which is less than the total number of words permitted by the Rules of Court. Counsel relies on the word count of the Microsoft Word word-processing program used to prepare this brief.

Dated: May 1, 2017

/s/ Aaron Mackey
Aaron Mackey

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CERTIFICATE OF SERVICE

The undersigned declares:

I am over the age of 18 years and not a party to the within action. My business address is 815 Eddy Street, San Francisco, California 94109.

On May 1, 2017, I caused to be served copies of the foregoing documents described as:

APPLICATION OF ELECTRONIC FRONTIER FOUNDATION TO FILE AMICUS CURIAE BRIEF;
AMICUS CURIAE BRIEF OF ELECTRONIC FRONTIER FOUNDATION IN SUPPORT OF YELP, INC.

on the parties in this action as follows:

SEE ATTACHED SERVICE LIST

☑ BY TRUEFILING: I caused to be electronically filed the foregoing document with the court using the court's e-filing system. The following parties and/or counsel of record are designated for electronic service in this matter on the TrueFiling website.

☑ BY OVERNIGHT MAIL: I caused to be placed true copies of Application of Electronic Frontier Foundation to File Amicus Curiae Brief, Proposed Amicus Curiae Brief of Electronic Frontier Foundation in Support of Yelp, Inc. in packages designed by FedEx, for overnight delivery with prepaid labels addressed per the attached service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on May 1, 2017.

By: /s/ Aaron Mackey
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